

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ELLERY CARTER,

*Plaintiff,*

vs.

JAVIER SALAZAR, BEXAR COUNTY  
SHERIFF; S.A.P.D., B.C.A.D.C., US  
WHITE HOUSE, BEXAR COUNTY,  
CITY OF SAN ANTONIO, TX,

*Defendants.*

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SA-20-CV-00554-DAE

**ORDER**

Before the Court in the above-styled cause of action is Plaintiff's *pro se* Application to Proceed in District Court without Prepaying Fees or Costs and Complaint [#1], which was referred to the undersigned automatically upon its filing on May 5, 2020. The undersigned has authority to enter this order pursuant to 28 U.S.C. § 636(b)(1)(A). By his motion, Plaintiff Ellery Carter seeks leave to proceed in forma pauperis ("IFP") based on his inability to afford court fees and costs associated with this case. Having considered the motion and documentation provided by Plaintiff, the undersigned will grant the motion to proceed IFP but order Plaintiff to file a more definite statement to clarify the factual allegations in his suit.

**I. Motion to Proceed IFP**

All parties instituting any civil action, suit, or proceeding in a district court of the United States, except an application for a writ of habeas corpus, must pay a filing fee of \$350, as well as an administrative fee.<sup>1</sup> See 28 U.S.C. § 1914(a). Plaintiff's motion to proceed IFP includes his

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<sup>1</sup> The administrative fee, which is currently \$50, is waived for plaintiffs who are granted IFP status. See *District Court Miscellaneous Fee Schedule*, available at <http://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>.

income and asset information, which indicates that Plaintiff is unemployed and has no other source of income or savings. This information demonstrates that Plaintiff does not have sufficient monthly resources available to pay the filing fee, and the undersigned will recommend that Plaintiff's motion to proceed IFP be granted.

## **II. More Definite Statement**

Pursuant to 28 U.S.C. § 1915(e), this Court may screen any civil complaint filed by a party proceeding *in forma pauperis* to determine whether the claims presented are (1) frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B). “A complaint is frivolous if it lacks an arguable basis in law or in fact.” *Biliski v. Harborth*, 55 F.3d 160, 162 (5th Cir. 1995).

Plaintiff's Complaint sues the United States White House, Bexar County, the City of San Antonio, Javier Salazar of the San Antonio Police Department, and BCADC (presumably Bexar County Adult Detention Center). Plaintiff's proposed Complaint [#1-1] alleges that he “was awakened” by someone, presumably an officer, who pulled a firearm on him, assaulted, and tazed him multiple times before arresting him for camping in public. Plaintiff seeks \$1.5 million in damages. In order to determine whether Plaintiff's Complaint should be served on any Defendant, Plaintiff must file a More Definite Statement within 21 days clarifying the facts underlying this case.

**IT IS THEREFORE ORDERED** that Plaintiff's *pro se* Application to Proceed in District Court without Prepaying Fees or Costs [#1] is **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiff's Complaint [#1-1] shall be filed by the Clerk without prepayment of fees, costs or the giving of security therefore, and the Clerk shall,

until further Order of this Court, waive the collection of any other fees or costs from Plaintiff. However, service upon Defendants should be withheld pending this Court's review under § 1915(e).

**IT IS FURTHER ORDERED** that **within 21 days of this Order (on or before June 16, 2020)**, Plaintiff shall file a **More Definite Statement** of the claims he seeks to present to this Court. In this More Definite Statement, Plaintiff should respond to the following questions:

(1) As to Javier Salazar, please answer the following questions:

- What did Salazar do?
- When did he do it?
- Where did these events occur?
- Were there any witnesses to the events? If so, who?
- Were you harmed physically by Salazar's actions? If so, describe how. Did you seek medical treatment for any injuries?
- Were you harmed financially by Salazar's actions? If so, describe.
- Were you harmed in some other way by Salazar's actions? If so, provide details.

(2) As to the White House, please answer the following questions:

- What did the White House do to you?
- How were you harmed by the White House?
- How was the White House involved in your alleged assault and arrest?

(3) As to Bexar County, the City of San Antonio, and the Bexar County Adult Detention Center,

- What did **each** of these Defendants do to you?
- Who was involved?
- When did the Defendant do it?

- Where did the events occur?
  - Were there any witnesses to the events? If so, who?
  - Were you harmed physically by any of these Defendant's actions? If so, describe how. Did you seek medical treatment for any injuries?
  - Were you harmed financially by any of these Defendant's actions? If so, describe.
  - Were you harmed in some other way by each of these Defendant's actions? If so, provide details.
- (4) On what date did your assault and arrest occur?
- (5) When were you taken into custody and when were you released?
- (6) Were charges brought against you? Were the charges dropped? If so, when?

Plaintiff shall include the following declaration at the end of his more definite statement:

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed on this day of 2020.

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Signature of Plaintiff

If Plaintiff fails to comply with this Order, the Court could dismiss this case for failure to prosecute. *See* Fed. R. Civ. P. 41(b). If Plaintiff does not wish to file a more definite statement, he may request voluntary dismissal of these claims pursuant to Federal Rule of Civil Procedure 41(a).

**IT IS SO ORDERED.**

SIGNED this 26th day of May, 2020.



ELIZABETH S. ("BETSY") CHESTNEY  
UNITED STATES MAGISTRATE JUDGE